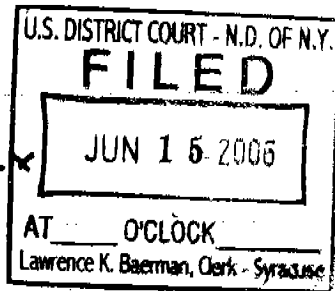


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MATTHEW JOHN MATAGRANO,
Plaintiff



- against -

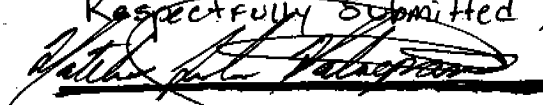
NOTICE OF MOTION
FOR

APPOINTMENT OF COUNSEL
28 U.S.C.A. Sect. 1915

OFFICE OF MENTAL HEALTH, et al;
Defendants.

PLEASE TAKE NOTICE that, plaintiff will make application to the Court before the Hon. Randolph F. Trecce, U.S. Magistrate at the United States Court-House located at 100 S. Clinton Street, 7th Floor Syracuse, New York, on the 26th day of July, 2006, at 10:00 a.m. or soon thereafter as movant may be heard for an Order pursuant to 28 U.S.C.A. Section 1915 for the Appointment of Counsel.

Dated: June 7, 2006
Alden, N.Y.

Respectfully Submitted,


Matthew John Matagrano
#04A5883 Plaintiff Pro-Se
Wende Correctional Facility
3040 Wende Rd. P.O. Box 1187
Alden, N.Y. 14004-1187
(716) 937-4000

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK X

MATTHEW JOHN MATABRANO,

Plaintiff

AFFIDAVIT IN SUPPORT
OF MOTION
FOR APPOINTMENT OF
COUNSEL

- against -

OFFICE OF MENTAL HEALTH, et al; OS-CV-1459 (DNH) (RFT)

Defendants. X

STATE OF NEW YORK)

ss:

COUNTY OF ERIE)

Matthew John Matabrano, being duly sworn,
deposes and says:

1. I am the pro-se plaintiff in the above-captioned case, I make this affidavit in support of plaintiff's motion for the Appointment of Counsel.

2. The complaint in this case alleges that the plaintiff was subjected to discrimination because of a physical and mental disability by employees of a psychiatric center; That plaintiff was retaliated against when he sought redress from the administration; That plaintiff was denied reasonable accommodations for a bi-lateral hearing impairment; That defendant's interfered with plaintiff's use of auxiliary aids; That plaintiff was denied adequate medical care for a serious medical need and; that plaintiff's right to medical confidentiality was violated.

3. Plaintiff was granted Informa Pauperis status by order of this Court on April 21, 2006.

- 2 -

4. That this a complex case because it contains several different legal claims, with each claim involving a different set of defendant's, employed by two different government agencies.

5. That plaintiff has on his own accord made diligent efforts to obtain counsel on his own both pro bono and on a contingency basis, which such efforts have been unsuccessful. (see attached correspondence)

6. That this case involves medical issues that may require expert medical testimony and or the cross-examination of such expert testimony.

7. That plaintiff has demanded a trial by jury.

8. That this case will require discovery of documents and depositions of a number of witnesses.

9. That the testimony will be in sharp conflict, since the plaintiff alleges he was discriminated against; denied adequate medical care for a serious medical need; and violated plaintiff's right to medical confidentiality; while defendant's deny they discriminated against the plaintiff; that plaintiff received adequate medical care for both his physical and psychiatric ailments; and that plaintiff's confidentiality in his medical treatment was not violated by their actions.

10. That the plaintiff is incarcerated and housed in segregation. For this reason he has very limited access to legal materials and has no ability to interview witnesses

- 3 -

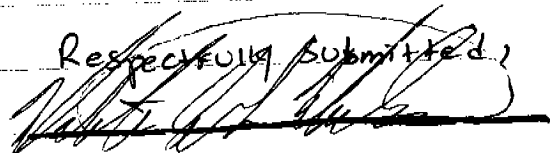
who are in other facilities or at the Central New York Psychiatric Center, or the ability to investigate the facts.

11. That plaintiff has set forth in the annexed Memorandum of Law, these facts, along with the legal merit of the plaintiff's claims, support the appointment of counsel to represent the plaintiff.

W H E R E F O R E, the plaintiff's motion for the appointment of counsel should be granted.

Dated: June 7, 2006
Alden, N.Y.

Respectfully Submitted,



Matthew John Matagrano

04A5883 Plaintiff Pro-Se

Wende Correctional Facility

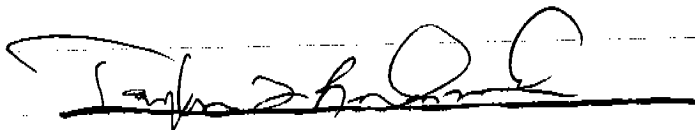
3040 Wende Rd. Po. Box 1187

Alden, N.Y. 14004 - 1187

(716) 937-4000

SWORN TO BEFORE ME THIS

7th day of June, 2006



NOTARY PUBLIC

TAYLOR L. ROBERTS
Notary Public, State Of New York
No. 01RO6091961
Qualified In Erie County
Commission Expires May 12, 2007

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK x

MATTHEW JOHN MATABRANO,

Plaintiff,

- against -

No. 05 cv 1459 (DNH) (RFT)

OFFICE OF MENTAL HEALTH, et al;

Defendants. x

MEMORANDUM OF LAW

IN SUPPORT OF PLAINTIFF'S

MOTION FOR THE APPOINTMENT

OF COUNSEL

Title 28 U.S.C.A. Sect. 1915

- 5 -

Statement of the case :

This is a civil rights action Filed by a mentally ill and physically disabled prisoner for damages, injunctive and declaratory relief pursuant to 42 U.S.C. Sect. 12101, et seq, as amended; Section 504 of the Rehabilitation Act of 1973 29 U.S.C. Sect. 794 and; 42 U.S.C. Sect. 1983 asserting claims for the unconstitutional discrimination against the plaintiff's physical and mental disability; retaliation against the plaintiff for seeking redress under the American's With Disabilities Act; For the denial of reasonable accommodations for a bi-lateral hearing impairment; For the confiscation and deprivation of plaintiff's auxiliary aids as a retaliatory punishment; For denial of medical care for a serious medical need and; For violating plaintiff's right to medical privacy.

Statement of the facts:

The complaint alleges inter alia, that the plaintiff suffers from a bi-lateral hearing impairment, that he is sensorially disabled and that he has been diagnosed with a psychiatric disorder, for which he requires treatment. At all times relevant herein the plaintiff was a patient of the Central New York Psychiatric Center at its acute care inpatient facility or at numerous satellite units located within the Department of Correctional Services maximum security facilities. The complaint further alleges that he was denied the reasonable accommodations of hearing aids, batteries, close-caption television, telephone amplification, and preferred seating. That plaintiff was discriminated against because of his hearing impairment.

- 6 -

i. that defendant's have denied plaintiff proper care for a serious medical condition; and on numerous occasions plaintiff's right to medical privacy was violated.

ARGUMENT

THE COURT SHOULD APPOINT COUNSEL FOR THE PLAINTIFF.

In deciding whether to appoint counsel for an indigent litigant, the Court should consider "the factual complexity of the case, the ability of the indigent to investigate the facts, the existence of conflicting testimony, the ability of the indigent to present his claim and the complexity of the legal issues." (see) Terminate Control Corp v. Horowitz, 28 F. 3d 1335 (2d Cir. 1994); Abdullah v. Gunter, 949 F. 2d 1032, 1035 (8th Cir. 1991); cert denied, 112 S. Ct. 1995 (1992). In addition Courts have said that the most important factor is whether the case appears to have merit. Cooper v. A. Sargent Co. Inc., 877 F. 2d 170, 173 (2d Cir 1989); Each of these factors weigh in support of the appointing counsel in this case. (Terminate Control Corp v. Horowitz, supra.)

1. Factual Complexity: The plaintiff allegations are predicated upon the actions of several employees of the Office of Mental Health (OMH) and the New York Department of Correctional

- 7 -

Services, who were acting under the "color of State law" have discriminated against plaintiff because of his physical and mental disabilities. That when plaintiff attempted to enforce his rights under both the American's With Disabilities Act and Section 504 of the Rehabilitation Act of 1973, he was retaliated against by defendants when they delayed his access to mental health practitioners; hearing aids and replacement batteries. Further that plaintiff was forced to endure severe physical pain for over Eight weeks because of an infected / impacted wisdom tooth, as such defendant's denied him adequate medical care for a serious medical need. Further that plaintiff was denied reasonable accommodations for his bi-lateral hearing impairment in violation of the Equal Protection Clause of the Fourteenth Amendment. see Clarkson v. Coughlin, 898 F. Supp. 1019 (S.D.N.Y. 1995) holding that "Failure of prison to accommodate deaf/hearing impaired prisoners violated the ADA and Section 504; " Nolley v. County of Erie, 776 F. Supp. 715 (W.D.N.Y. 1991) and; Henrietta v. Giuliani, 119 F. Supp. 2d 181 (E.D.N.Y. 2000) appeal dismissed 246 F.3d 176, aff'd 331 F.3d 261 holding that "Protections afforded by American's with Disabilities Act (ADA) ensure that with or without reasonable accommodations or programs and services, disabled individual who meets essential eligibility requirements to participate in program or receive benefit in question is not discriminated against by reason of disability". also, Marisol A. by Forbes v. Giuliani, 929 F. Supp 662 (S.D.N.Y. 1996) and Love v. Westville Correctional Center,

- 8 -

103 F. 3d 558 (7th Cir. 1996)

To the extent that plaintiff alleges denial of adequate medical care, the medical issues are complex. Plaintiff has stated a clear "Hathaway Claim" against the defendants. Hathaway v. Coughlin, (Hathaway III), 99 F. 3d 550, 553 (2d Cir. 1996). "A Hathaway claim applies to public officials deliberate indifference to a plaintiff's medical needs, in violation of the Eighth Amendment's proscription against cruel and unusual punishment." ; Carrasquillo v. City of New York, 324 F. Supp. 2d 428 (S.D.N.Y. 2004); see also Estelle v. Gamble, 429 U.S. 97, 97 S. Ct. 285 finding that "Deliberate indifference to serious medical needs of prisoner constitutes unnecessary and wanton infliction of pain proscribed by Eighth Amendment, whether the indifference is manifested by prison doctors in response to prison needs or by prison guards in intentionally interfering with treatment once prescribed; regardless of how evidenced deliberate indifference to prisoners serious illness or injuries states cause of action under civil rights statute". Also a Federal Court in this Circuit has held that denial of adequate dental care equates denial of medical care for a serious medical need. Dean v. Coughlin, 623 F. Supp 392 (S.D.N.Y. 1985); see also Brownlee v. Connie, 957 F.2d 353, 354 (7th Cir. 1992). Plaintiff's medical claims will probably require a medical expert witness or the need to cross-examine a witness called by the defendants, or both. The presence of medical or other issues requiring expert testimony supports the appointment of Counsel. Moore v. Mabius, 976 F. 2d 268, 272

- 9 -

(5th Cir. 1992); Jackson v. County of Melean, 953 F. 2d. 1070, 1073 (7th Cir. 1992); and Tucker v. Randall, 948 F. 2d 388, 392 (7th Cir. 1991).

2. Plaintiff's Ability To Investigate: The plaintiff is incarcerated and housed in segregation and has no ability to investigate the facts. For example, he is unable to identify, locate, and interview the patients/prisoners who were housed on the same hospital ward or in nearby observation cells who witnessed some of or all the discrimination and retaliation. He has been transferred to a different institution, a factor that several courts have cited in support of their decision to appoint counsel. Tucker v. Randall, supra; Gatson v. Coughlin, 679 F. Supp. 270, 273 (W.D.N.Y. 1988); and Armstrong v. Synder, 103 F.R.D. 96, 105 (E.D. Wis. 1984)

In addition, this case will require considerable discovery concerning the identity of witnesses, psychiatric records, the reports made by the staff about the incidents; history of the defendant's prior acts of discrimination and or abuse of those in their care, and the plaintiff's medical and mental health history. Tucker v. Dickey, 613 F. Supp. 1124, 1133-34 (W.D. Wis. 1985); see Hendricks v. Coughlin, 114 F. 3d 390 (2nd Cir. 1997); and Jermosen v. Coughlin, 745 F. Supp. 128 (W.D.N.Y. 1990). Need for discovery supports appointment of counsel.

3. Conflicting Testimony: The plaintiff's account of the numerous requests for reasonable accommodations; dental care; the

- 10 -

Either tacit or outright denial of these requests; the allegations of retaliation by defendants against the plaintiff; and the outright and constructive denial of adequate medical care for a serious medical need are all in conflict with statements and assertions of the defendants. These aspects of this case will be a credibility contest between the defendants, the plaintiff and such inmate witnesses as can be located. The existence of these credibility issues supports the appointment of counsel. See Gatson v. Coughlin, 679 F. Supp. 270, 273 (W.D.N.Y. 1988).

4. The ability of the indigent to present his claim: The plaintiff is an indigent prisoner confined to segregation with very limited access to legal materials. Hendricks v. Coughlin, 114 F. 3d 390 (2nd Cir 1997) citing (plaintiff's inability to manage claim on his own); Rayes v. Johnson, 969 F. 2d 700, 703-704 (8th Cir. 1992) citing lack of ready access to a law library as a factor supporting appointment of counsel.

5. Legal Complexity: The large number of defendants (nine in this action), some of whom are supervisory officials, mental health and medical professionals, presents many complex legal issues of determining which defendants were sufficiently personally involved

- 11 -

in the constitutional violation(s) to be held liable. Plaintiff's allegations are predicated on three separate Federal statutes, 42 U.S.C. Sect. 12101 et. seq, 42 U.S.C. Sect. 1983 and 29 U.S.C. Sect 794 and the 8th and 14th Amendments to the Constitution of the United States. In addition, the plaintiff has asked for a jury trial, which requires much greater skill than the plaintiff has or can develop. see Hendricks v. Coughlin, 114 F. 3d 390 (2d Cir 1997) citing (legal complexity); and Abullah v. Gunter 949 F.2d 1032, 1036 (8th Cir 1991) citing (jury demand as a factor supporting appointment of counsel) cert denied, 112 S. Ct. 1995 (1992)

b. Merits of the case: The plaintiff's allegations, if proved, clearly would establish constitutional violations. The allegations of denial of reasonable accommodations for a disability clearly states an 14th Amendment violation. see Henrietta D. v. Giuliani, 119 F. Supp 2d. 181 (E.D.N.Y. 2000); Veloz v. New York, 339 F. Supp. 2d 505 at 527 (S.D. N.Y. 2004); Clarkson v. Coughlin, 898 F. Supp 1019 (S.D.N.Y. 1995); Candelaria v. Coughlin, 787 F. Supp. 368, 378 (S.D.N.Y. 1992); Lawrence v. Scully, 575 F. Supp 39, 40 (S.D.N.Y. 1983); and Young v. Harris, 509 F. Supp. 1111, 1113-14 (S.D.N.Y. 1981).

The allegations of denial of medical care amount to deliberate indifference to a serious medical need, which the U.S. Supreme Court has specifically cited as unconstitutional. Estelle v. Gamble, 429 U.S. 97, 105, 97 S.Ct. 285 (1976); and plaintiff has clearly stated an Eighth Amendment violation. Hathaway v. Coughlin, (Hathaway III), 99 F. 3d 550, 553 (2d Cir 1996); Martinez v. Mancusi, 443 F.2d 921 (2d Cir 1970) cert denied 91 S. Ct. 1202; and Smith v. Carpenter,

- 12 -

316 F. 3d 178 (2d Cir. 2003). Further the denial of adequate dental care has also been held to state a valid Eighth Amendment claim. Rivera v. Goord, 119 F. Supp 2d. 327 (S.D.N.Y. 2000); Hogan v. Russ, 990 F. Supp. 146 (N.D. N.Y. 1995); and Dean v. Coughlin, 623 F. Supp. 392 (S.D.N.Y. 1985).

The retaliation by defendants against the plaintiff for filing grievances, and letters of complaint to Supervisory Officials violated a Constitutionally protected right under the First Amendment. Bennett v. Goord, 343 F. 3d 133 (2d Cir. 2003) holding that "to prevail on retaliation claims brought under Section 1983 prisoner had the burden of showing, first that he engaged in Constitutionally protected conduct and second, that the conduct was a substantial or motivating factor for the adverse actions taken by prison officials." Plaintiff made complaints that defendant's were not providing reasonable accommodations for his bi-lateral hearing impairment; were discriminating against plaintiff due to his sexual orientation; were denying plaintiff adequate medical care for a serious medical need; and that defendants were violating plaintiff's right to medical confidentiality. The submitting of these grievances and letters of complaint by plaintiff is an undisputed Constitutionally protected conduct. See Hendricks v. Coughlin, 114 F. 3d 390 (2d Cir 1997); and Justice v. Coughlin, 941 F. Supp. 1312 (N.D.N.Y. 1996) where this very Court has held that "prison grievances are

- 13 -

Constitutionally protected conduct for purposes of inmate retaliation claim under Section 1983."

Further the denial or replacement hearing aid batteries in a timely manner, and the deprivation of plaintiff's hearing aids for five (5) days after the filing of a formal assault complaint was motivated by the above constitutionally protected conduct. Gill v. Hoadley, 261 F. Supp. 2d 113 (N.D.N.Y. 2003).

The "casual, unjustified" dissemination of confidential medical/mental health information by the defendants who are employed as mental health practitioners to non-medical, mental health staff, as well as other prisoners' is unconstitutional. Doe v. Coughlin, 697 F. Supp. 1234, 37-38 (N.D.N.Y. 1988); Baez v. Rapping, 680 F. Supp. 112, 115 (S.D.N.Y. 1988); Casey v. Lewis, 834 F. Supp. 1477, 1546 (D. Ariz. 1997) (condemning sick call system that required inmates to discuss medical problems in other inmates hearing); and Nolley v. County of Erie, 776 F. Supp. 715 (W.D.N.Y. 1991). (See also N.Y. Public Health Law Section 2780 et. seq. (McKinney 1991 supp.), (cited by Nolley v. County of Erie, supra)

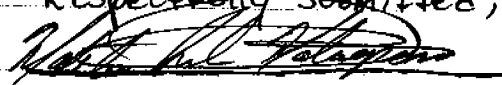
On its face, then this is a meritorious case.

- 14 -

CONCLUSION

For the foregoing reasons, the Court should grant the plaintiff's motion and appoint counsel in this case.

Dated: June 7, 2006
Alden, N.Y.

Respectfully Submitted,

Matthew John Matagrano
045883 Plaintiff Pro-se
Wende Correctional Facility
3040 Wende Rd. Po. Box 1187
Alden, N.Y. 14004-1187
(716) 937-4000

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK x

MATTHEW JOHN MATABRANO,

Plaintiff,

- against -

AFFIDAVIT OF SERVICE

BY MAIL

05 CV 1459 (DNH) (RFT)

OFFICE OF MENTAL HEALTH, et. al;

Defendants. x

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

Matthew John Matabrano, being duly sworn to the
day of JUNE, 2006, deposes and says:

1) I am over the age of 18 and reside at Wende
Correctional Facility, 3040 Wende Rd. Po. Box 1187, Alden
N.Y. 14004-1187.

2) That on the ___ day of JUNE, 2006, I served
the following documents:

(i) Notice of Motion For Appointment
of Counsel;

(ii) Affidavit In Support;

(iii) Memorandum of Law, and

(iv) Correspondence. [EXHIBITS]

in the above entitled proceeding, by mailing the same in a sealed
envelope, postage paid and delivering it to prison authorities
according to the established procedures for mailing such items,
addressed to the proper mailing address of counsel for the

AFFIDAVIT OF SERVICE
DS CV 1459 (DNH) (RFT)

- 2 -

defendants as listed below:

To: Hon. Elliot Spitzer
State of New York Attorney General
Department of Law

ATTN:

OF COUNSEL
State Capitol
Albany, N.Y. 12224

Dated: June 12th, 2006
Alden, N.Y.

~~Respectfully Submitted~~
~~Matthew John Matagrano~~

Matthew John Matagrano
#04A5883, Plaintiff Pro-Se
Wende Correctional Facility
3040 Wende Rd. P.O. Box 1187
Alden, N.Y. 14004 - 1187
(716) 937-4000

SWORN TO BEFORE ME THIS
12 day of June, 2006

Marian Duminuco

NOTARY PUBLIC

MARIAN DUMINUCO
Notary Public, State of New York
Qualified in Erie County
Commission Expires June 2007

DISABILITY ADVOCATES, INC.

5 CLINTON SQUARE, THIRD FLOOR
ALBANY, NEW YORK 12207-2201
(518) 432-7861 (VOICE AND TTY)
(518) 427-6561 (FAX)

EXECUTIVE DIRECTOR:
CLIFF ZUCKER, ESQ.

MANAGING ATTORNEY:
TIMOTHY A. CLUNE

SECRETARY/BOOKKEEPER:
MICHELE MAHAR

SENIOR STAFF ATTORNEY:
SIMEON GOLDMAN

STAFF ATTORNEYS:
ROGER A. BEARDEN
NINA LOEWENSTEIN
JENNIFER MONTHIE

April 21, 2005

Matthew Matagrano, #04-A-5883
Elmira C.F.
P.O. Box 500
Elmira, NY 14902

Dear Mr. Matagrano:

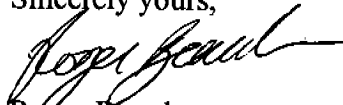
Thank you for your recent letter. I suggest you contact Prisoners' Legal Services of New York regarding your complaints. They may be reached as follows:

Prisoners' Legal Services of New York
114 Prospect Street
Ithaca, NY 14850
Attn: Central Intake

You may also wish to submit a grievance regarding your situation. This will be important if you should ever decide to file a lawsuit.

Thank you for contacting Disability Advocates, Inc.

Sincerely yours,


Roger Bearden

A-1



June 28, 2005

Dear Matthew Matagrano,

Thank you for your letter to Lambda Legal.

Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

From your letter, it seems that at this stage you would be best served by a prisoners' advocacy expert. This type of advocacy is beyond the scope of Lambda's work and resources.

Enclosed are copies of listings from the Prisoners' Assistance Directory, published by the National Prison Project.

The staff attorney recommends that you contact the ACLU National Prison Project directly. Their address is
733 15th Street NW, Suite 620
Washington, DC 20005.

We sincerely hope that your situation is resolved quickly and favorably.

Sincerely,



Richard Saenz, Help Desk Specialist
Lambda Legal
120 Wall Street, Suite 1500
New York, NY 10005
212.809.8585 x236
rsaenz@lambdalegal.org

A-2

Prisoners' Legal Services of New York

CENTRAL INTAKE UNIT

114 Prospect Street
Ithaca, New York 14850
Tel. (607) 273-2283
FAX (607) 272-9122

Jerry Wein
Executive Director

Patience E. Schermer
Managing Attorney

November 8, 2005

Matthew Matagrano
04-A-5883
P.O. Box 300
Marcy, NY 13403-0300

Dear Mr. Matagrano:

This letter is in response to your recent letter requesting assistance. We will not be able to provide you with assistance because the problem you raised is not the type of matter PLS is able to handle at this time. If we have any client education materials that relate to your request, we are enclosing those materials with this letter. If you sent any documents with your letter, we are returning them to you with this letter.

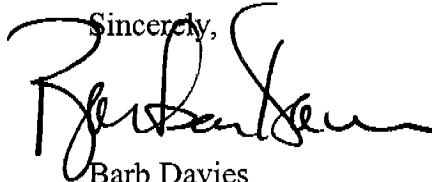
At this time, the only new requests for assistance which PLS is able to accept are the following:

- * Tier III Hearings: challenges to disciplinary Tier III hearings where the disposition is 18 months or more of SHU time and/or loss of good time or if the disposition may immediately affect the prisoner's release.
- * Medical Care: claims of inadequate treatment for a serious medical need.
- * Mental Health: claims of inadequate treatment for a serious mental health need.
- * Excessive Use of Force: claims of a recent excessive use of force by correctional staff which resulted in serious injury.
- * Sexual Abuse: claims of sexual abuse by correctional staff.
- * Jail Time: claims for jail time credit of 90 days or more of additional credit.
- * Sentence Issues: claims that the length of a sentence was improperly calculated by DOCS or that DOCS is holding the prisoner beyond her/his proper release date.

If you have an open case being handled by PLS staff in one of the regional offices, you should write directly to that staff person. All new requests for legal assistance from all prisons are handled through the Central Intake office. If you write directly to a regional PLS office requesting help on a new

legal matter, the regional office staff will forward your letter to Central Intake for a response. This will delay PLS' response to your request.

We regret that we are unable to provide you with assistance. Please contact us if you need assistance with a legal matter which falls within the areas PLS is currently handling.

Sincerely,

Barb Davies
Intake Specialist

PS: You will have to continue to work with the medical and mental health staffs at CNYPC regarding the medication and hearing aid issues you wrote about.

Enc.: Booth Notice

Prisoners' Legal Services of New York

CENTRAL INTAKE UNIT

114 Prospect Street
Ithaca, New York 14850
Tel. (607) 273-2283
FAX (607) 272-9122

Alba S. Johnson
Executive Director

January 9, 2006

Matthew Matagrano
04-A-5883
P.O. Box 1187
Alden, NY 14004-1187

Dear Mr. Matagrano:

This letter is in response to your recent letter requesting assistance. We will not be able to provide you with assistance because the problem you raised is not the type of matter PLS is able to handle at this time. If we have any client education materials that relate to your request, we are enclosing those materials with this letter. If you sent any documents with your letter, we are returning them to you with this letter.

At this time, the only new requests for assistance which PLS is able to accept are the following:

- * Tier III Hearings: challenges to disciplinary Tier III hearings where the disposition is 18 months or more of SHU time and/or loss of good time or if the disposition may immediately affect the prisoner's release.
- * Medical Care: claims of inadequate treatment for a serious medical need.
- * Mental Health: claims of inadequate treatment for a serious mental health need.
- * Excessive Use of Force: claims of a recent excessive use of force by correctional staff which resulted in serious injury.
- * Sexual Abuse: claims of sexual abuse by correctional staff.
- * Jail Time: claims for jail time credit of 90 days or more of additional credit.
- * Sentence Issues: claims that the length of a sentence was improperly calculated by DOCS or that DOCS is holding the prisoner beyond her/his proper release date.

If you have an open case being handled by PLS staff in one of the regional offices, you should write directly to that staff person. All new requests for legal assistance from all prisons are handled through the Central Intake office. If you write directly to a regional PLS office requesting help on a new

A-S

legal matter, the regional office staff will forward your letter to Central Intake for a response. This will delay PLS' response to your request.

We regret that we are unable to provide you with assistance. Please contact us if you need assistance with a legal matter which falls within the areas PLS is currently handling.

Sincerely,

A handwritten signature in black ink that reads "Aleta Albert". The signature is cursive and fluid.

Aleta Albert
Intake Specialist

P.S. I am enclosing some materials for you concerning accommodations for inmates with disabilities, and Section 504 of the Rehabilitation Act. If you need mental health services, you should request a call out to see mental health staff. I note from the DOCS website that you returned from CNYPC last month. You should continue to work with the mental health staff at your facility and if you feel it is necessary, ask for an emergency call out for mental health.

Enc.: Booth Notice
Information from the US Health & Human Services website
Directive #2607



The Legal Aid Society

Prisoners' Rights Project

199 Water Street, New York, NY 10038

Tel: (212) 577-3530

www.legal-aid.org

Steven Banks

Associate Attorney-in-Chief

Prisoners' Rights Project

John Boston

Project Director

MEMORANDUM

To: Inmates in NYS DOCS custody

From: The Prisoners Rights Project

Re: Your recent correspondence

Because of staff cuts resulting from budget problems at Legal Aid, we are unable to respond to your letter.

In general, we will be unable to respond to most letters, and cannot make photocopies of documents or copies of cases, because of lack of staff.

Although we will no longer be able to advocate for individual inmates, a few attorneys remain to resolve litigation which is pending. Inmates with problems addressed by current litigation should continue to write to the Prisoners Rights Project. These include:

Problems of deaf and hearing impaired inmates

Sexual abuse of women prisoners

Medical problems of HIV-positive prisoners statewide

Medical problems at Green Haven

You may be able to obtain help from Prisoners' Legal Services of New York. Correspondence should be directed to: Prisoners' Legal Services of New York, Central Intake Unit, 114 Prospect Street, Ithaca, N.Y. 14850.

You should always file a grievance (or, for prison programs with their own appeal process like the disciplinary system, an administrative appeal) about serious problems you encounter in prison, both to solve the problem and because exhausting administrative remedies is now required before you can bring a legal action.

In extremely limited instances when we are able and have it available, we are enclosing information that may be of assistance to you. We are returning your letter and any enclosures you sent us.

We deeply regret that we can no longer offer the services we have offered for 30 years. We wish you the best of luck.

LEGAL SERVICES OF CENTRAL NEW YORK, INC.

MAIN OFFICE: 472 SOUTH SALINA STREET, SUITE 300
SYRACUSE, NEW YORK 13202

TELEPHONE (315) 475-3127
STATEWIDE TOLL-FREE (866) 475-9967
FAX (315) 475-2706

TTY (FOR SPEECH/HEARING IMPAIRED) (315) 475-3120 OR (866) 475-3120

May 15, 2006

LEGAL MAIL

Matthew J. Matagrano
DIN #04-A-5883
Wende Correctional Facility
3040 Wende Road, PO Box 1187
Alden, New York 14004-1187

Dear Mr. Matagrano:

We recently received your request for legal assistance. Legal Services of Central New York represents clients in a thirteen county area in Central New York. Since you do not reside in one of those counties, we cannot offer you assistance.

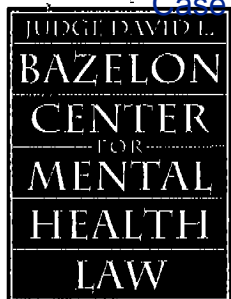
I regret that we cannot help you.

Sincerely,
LEGAL SERVICES OF CENTRAL
NEW YORK, INC.



Dennis A. Kaufman
Executive Director

DAK:lad



May 16, 2006

Civil Rights and Human Dignity

BOARD OF TRUSTEES

Nikki Heidepriem, Chair
Heidepriem & Mager
Washington DC

Anita Allen-Castellitto
University of Pennsylvania
Law School

David B. Apatoff
Arnold & Porter, Washington DC

Eileen A. Bazelon, MD
Department of Psychiatry
Drexel University

Robert A. Burt
Yale Law School

Jacqueline Dryfoos
New York NY

Kenneth R. Feinberg
The Feinberg Group
Washington DC

Elliot F. Gerson
Aspen Institute

Howard H. Goldman, MD
Department of Psychiatry, University
of Maryland School of Medicine

Emily Hoffman
On Our Own Maryland

C. Lyonel Jones
Legal Aid Society of Cleveland

Ruth Luckasson
Department of Educational Specialties
University of New Mexico

Jacki McKinney
National Association of People of
Color Consumer/Survivor Network

Martha L. Minow
Harvard Law School

Stephen J. Morse
University of Pennsylvania
Law School

Joseph G. Perpich
JG Perpich LLC, Bethesda MD

Paul Recer
Science and medical journalist
Washington DC

Harvey Rosenthal
New York Association of
Psychiatric Rehabilitation Services

W. Allen Schaffer, MD
Hartford, CT

Cynthia M. Stinger
Washington Group International

Martin Tolchin
Journalist and author
Washington D.C.

H. Rutherford Turnbull, III
Beach Center on Disability
University of Kansas

Sally Zinman
California Network of
Mental Health Clients

TRUSTEE EMERITA

Mary Jane England, MD
Regis College

HONORARY TRUSTEE

Miriam Bazelon Knox
Washington DC

EXECUTIVE DIRECTOR

Robert Bernstein, PhD

Affiliations listed for information only

M. Matagrano #04A5883
Wende Correctional Facility
Wende Road, POB 1187
Alden, NY 14004-1187

Dear Mr. Matagrano:

In response to your inquiry, the Bazelon Center is not able to handle requests for information or assistance. However, protection and advocacy systems in each state are federally funded to assist people with mental illnesses or developmental disabilities in understanding and asserting their rights. You can find the address of the P&A in your area on the website of their national association, http://www.napas.org/aboutus/PA_CAP.htm; or call the National Alliance for the Mentally Ill at 1-800-950-NAMI (6264).

For additional state advocacy resources, see the list of links on the Bazelon Center's website, at <http://www.bazelon.org/links/index.htm>.

If you do not have access to the internet, you may call the National Disability Rights Network at (202) 408-9514 or to send a fax # (202) 408-9520. You may also send a letter to this address; 900 Second Street, NE, Suite 211, Washington, DC 20002, and they will provide you with a referral in your state.

Sincerely,


Administrative Assistant

Enclosures

A-9

Matthew John Matagrano
045883
Wende Correctional Facility
3040 Wende Rd. Po. Box 1187
Alden, N.Y. 14004-1187

May 15, 2006

Steven N. Feinman, Esq.
Feinman & Grossbard P.C.
19 Court Plaza, Suite 201
White Plains, N.Y. 10601

Re: Matagrano v. Office of Mental Health, et al
05 cv 1459 (DNH/RFT)
U.S.D.C. N.D. N.Y.

Dear Mr. Feinman:


I am writing your law firm with the hope that you may be of assistance in representing me in the above referenced action against the New York State Office of Mental Health. I have filed a complaint under the American's with Disabilities Act, Section 504 of the Rehabilitation Act and 42 U.S.C. Section 1983 for discrimination because of my physical and mental disability; denial of reasonable accommodations; denial of adequate medical care for a serious medical need; retaliation; and for violations of the right to medical

- 2 -

privacy. The majority of these allegations stem from my two psychiatric commitments to the Central N.Y. Psychiatric Center inpatient unit. While others come from the Satellite Mental Health Units of Central N.Y. Psychiatric Center at 3 maximum security facilities in the Department of Corrections.

My physical disability is a bi-lateral hearing impairment, which I wear two behind the ear hearing aids and require the reasonable accommodations of close-caption t.v., phone amplification, preferred seating, and shake awake alarm. My mental illness has been diagnosed as Bi-polar disorder and Borderline Personality Disorder (as of 12/2/05). I have a long history of psychiatric inpatient treatment for self abuse and suicidal ideations. (7/1983 age of 7) Neither of my disabilities are a result of my incarceration. I am serving an indeterminate sentence of 2-4 years for Attempted Burglary 3rd degree and my earliest release date is 12/30/06.

I thank you in advance for your time and consideration of my request. Any assistance or advice you may be able to offer would greatly be appreciated. I look forward to hearing from you soon.

Very Truly Yours,

 Matthew John Matagano

DISABILITY ADVOCATES, INC.

5 CLINTON SQUARE, THIRD FLOOR
ALBANY, NEW YORK 12207-2201
(518) 432-7861 (VOICE AND TTY)
(518) 427-6561 (FAX)

EXECUTIVE DIRECTOR:
CLIFF ZUCKER, ESQ.

MANAGING ATTORNEY:
TIMOTHY A. CLUNE

SECRETARY/BOOKKEEPER:
JODI HOVIOUS

SENIOR STAFF ATTORNEY:
SIMEON GOLDMAN

STAFF ATTORNEYS:
ROGER A. BEARDEN
NINA LOEWENSTEIN
JENNIFER MONTHIE

May 31, 2006

Matthew Matagrano
Wende C.F.
P.O. Box 1187
Alden, N.Y. 14004-1187

Dear Mr. Matagrano:

This office received your complaint about lack of reasonable accommodation at CNYPC, and your lack of confidential mental health treatment at Wende. As to your court complaint, I encourage you to write to Legal Services of Central New York, Inc. 472 S. Salina St., Suite 300, Syracuse N.Y. 13202. That program handles physical disability issues in Central New York; we do not cover that region. If they do not have the resources to represent you in your lawsuit, you should ask the court clerk about the possibility of assigning you counsel.

I am willing to follow up on your complaint concerning lack of cell-side interviews, if you would please send me the papers concerning the complaint that you made to DOCS (your grievance, their response, your appeals, Central Office's response). What I will do is send the complaint to the central OMH administration and to CNYPC. We also can bring up the problem in the context of the statewide prison mental health litigation, Disability Advocates vs. OMH et al. I do not have time to do more than that, e.g., to file another lawsuit on your behalf. But I certainly can write a letter for you also because it is in the interest of other inmates with mental illness at Wende.

I look forward to hearing from you again on the Wende mental health matter.

Yours truly,



Nina Loewenstein
Staff Attorney

A - 11

KOOB & MAGOOLAGHAN

Attorneys at Law

SOUTH STREET SEAPORT 19 FULTON STREET SUITE 408 NEW YORK, NEW YORK 10038

TELEPHONE: (212) 406-3095

FACSIMILE: (212) 349-4658

ELIZABETH L. KOOB
JOAN MAGOOLAGHAN
ALEXANDER A. REINERT
KEITH M. DONOGHUE

WESTCHESTER COUNTY OFFICE:
221 DEVOE AVENUE
YONKERS, NEW YORK 10705
TEL: (914) 964-8888

June 1, 2006

Matthew John Matagrano, 04A5883
Wende Correctional Facility
3040 Wende Rd.
P.O. Box 1187
Alden, NY 14004-1187

Re: Request for Representation

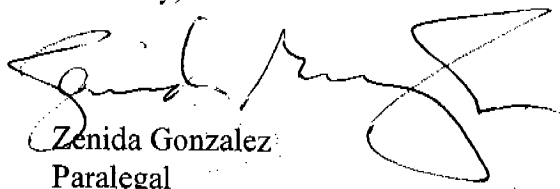
Dear Mr Matagrano:

I write to inform you that we have received your correspondence and request for legal representation. We thank you for seeking the services of our firm. However, because of the extremely large number of requests we receive, we are unable to even evaluate your claims at this time.

It takes us approximately forty-five days from the date of receipt of correspondence to make a determination whether we can accept a case for representation. While you may wish to wait that period of time to receive further notification from us on your request for representation, you must understand that **until such time as we execute a written retainer agreement we are not your counsel**. Moreover, we do not execute written retainer agreements unless we determine (1) that there is merit to the case, and (2) that we have the resources to accept the case. Accordingly, you may wish to seek the services of another firm, as we make no representations whatsoever at this time that we will be able to assist you.

In the event you have not heard from us within forty-five days from the date of this letter, please feel free to write and inquire as to the status of your request for representation.

Sincerely,


Zenida Gonzalez
Paralegal

A-12

Dear Sir/Madam:

This will acknowledge your letter in which you request assistance.

Although the New York State Bar Association has no jurisdiction over the matter you inquired about, the agency listed below may be able to assist you. We hope this information is helpful.

NYS Mental Hygeine Legal Services
New York City Office
60 Madison Avenue
2nd Floor
New York, New York 10010

NYS ADVOCATE FOR THE DISABLED
CQCAPD (OAR)
1 Empire State Building Suite 1001
Albany, NY

AMERICAN CIVIL LIBERTIES UNION
1645 Statler Towers
Buffalo, NY 14202

NEW YORK STATE BAR ASSOCIATION

#1



NEW YORK STATE BAR ASSOCIATION
ONE ELK STREET, ALBANY, NY 12207

UNITED STATES POSTAGE

12207
02 1A
0004319264
MAY 30 2006
MAILED FROM ZIP CODE 12207
\$ 00.39⁰
FITNEY BOWES

Matthew Matagrano 04A5883
Wende Correctional Facility
Wende Road
Alden, NY 14004

G-37-12

ROCE

A-18

Matthew J. Matagrano
04-A-5883 G-37-12
Orange Correctional Facility
3040 Wards Rd. P.O. Box 1187
Alden, N.Y. 14004 - 1187

June 1, 2006

Managing Attorney
Legal Aid Society of Mid-New York Inc.
225 Genessee Street, 2nd Flr
Utica, N.Y. 13501

Re: Matagrano v. Miles, et al;
DS cv 1459 (DNH/RFT)
U.S.D.C. N.D.N.Y.

Dear Sir/Madam:

I am writing to your organization with the hope that you may be able to provide assistance and or advice concerning a civil complaint I have filed against the Office of Mental Health and Central N.Y. Psychiatric Center (among others) located in Oneida County. My complaint alleges violations of my rights under Section 504 of the Rehabilitation Act; American's with Disabilities Act; 42 U.S.C. Section 1983; and the 1st, 8th and 14th Amendment. I am bi-laterally hearing impaired, and suffer from a serious mental illness. While a patient at C.N.Y.P.C. and it's various satellite units I have been denied reasonable accommodations for my hearing impairment, denied adequate


- 2 -

Matagrano v. Miles, et. al

June 1, 2006

Medical care and mental health treatment. Was physically assaulted by treatment staff; and retaliated against for filing grievances and letters of complaints. For the allegations set forth in the amended complaint and the supplemental pleading I have exhausted all available administrative remedies as required by the Prisoner Litigation Reform Act of 1996.

I am attempting to locate counsel either pro bono or on a contingency basis. Any assistance or advice your organization may be able to offer would greatly be appreciated. I look forward to hearing from your office in the near future. Thank you.

Very Truly Yours,

 Matthew John Matagrano

cc: file.

A-15